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'Surprise' Westmoreland Trial Star Against CBS Is the General Himself

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NEW YORK—One day last week, just as the courtroom reached its mid-afternoon lull, the moment when even those riveted by a trial try to fight off daydreams or sleep, retired Army general William C. Westmoreland reached into his wallet to make a point about how he dealt with his men in Vietnam 18 years ago.

"I published a little card, which I sent to every officer," Westmoreland testified as he began pulling the small, worn item out of his billfold.

"Your honor," said Westmoreland's lawyer, Dan M. Burt, unable to suppress a triumphant smile as he walked to the witness stand to get the card. "We would offer in evidence exhibit 1704."

As the jury became alert and the audience was suddenly transfixed, the general, who is defending his Vietnam military record in a \$120 million libel suit against CBS, read from the tiny exhibit about how his officers should "make the welfare of your men your primary concern."

It was a moment that would have warmed Perry Mason's heart in a trial that up to now has featured mounds of dry, 17-year-old documents and men with creaky memories.

Clearly, the surprise witness so far in Westmoreland's case has been Westmoreland.

Among the legal insiders who have followed the trial over five weeks, the general was not expected to do well as a witness.

Sitting stiffly at the plaintiff's table, looking as though he were carved out of silver granite, Westmoreland was delayed from testifying until the middle of his case because some of his lawyers feared he might come over as a tough, bloodless man if he testified first or last.

But in two days of answering questions from his lawyer, his well-schooled military bearing has translated into an air of confidence. Firmly and authoritatively, Westmoreland has denied the thrust of a 1982 "CBS Reports" documentary—"The Uncounted Enemy: A Vietnam Deception"—that accused him of participating in a conspiracy to suppress data indicating higher enemy troop levels in order to maintain support for the war.

Sometime this week, CBS lawyer David Boies is expected to cross-examine him, asking about the network's version of his testimony, some of which seems to support at least part of the CBS broadcast.

If Boies circles in as mercilessly on Westmoreland as he has on other witnesses, he could offend jurors who might think he is being disrespectful. If he's too soft, he could miss his opportunity to get crucial testimony for CBS.

"It's a no-win situation," Boies said Thursday after court.

Some members of CBS' legal and public relations team at the trial also were clearly disillusioned Friday afternoon after Westmoreland gave an impassioned defense of his troops and an emotional critique of how the press covered the war.

However, as CBS spokesman James F. Noonan, himself a Vietnam veteran, said yesterday: "That's not at issue in this trial. The people who are pointing a finger at him are not members of the press; they are some of his own officers."

The CBS side of the case, which is not expected to begin until about mid-December, will include a long witness list of mostly lower-ranking military and intelligence men from the Vietnam war era.

Many of these men have already said that they felt the broadcast correctly portrayed them as having participated in an effort to suppress their best intelligence estimates of enemy strength in 1967 because their superiors feared losing public support in the United States.

Westmoreland's witnesses to date have been those who made the policy, virtually all of whom have denied a CBS thesis that Westmoreland's command took part in a conspiracy to "cook the books," as one codefendant, Mike Wallace, said in the broadcast.

At issue in this case is whether the CBS broadcast libeled the general when it accused him of suppressing troop data compiled for his superiors, including President Lyndon B. Johnson.

Another thrust of the broadcast, which aired Jan. 23, 1982, was that this data was kept from the press, the public and Congress. But Westmoreland attorney Burt is concentrating the case on whether the general kept secret new intelligence data from his superiors, a breach of military duty.

In his two days on the stand, Westmoreland has said that he told his superiors about a crucial internal debate at his Military Assistance Command, Vietnam (MACV) headquarters in Saigon about whether to keep "irregular" units in the official enemy summary, called the Order of Battle.

Westmoreland said his military boss, Adm. Ulysses S. Grant Sharp, then commander in chief of Pacific Forces, was at briefings in Saigon on May 19, 1967, on the issue of whether to retain the units, which according to new intelligence then included almost 100,000 more enemy troops than were previously counted by the military.

Westmoreland, who then ordered that this category not be counted in the Order of Battle because they were "civilians" whose defensive

weapons were booby traps and punji sticks, also said he sent word of this decision to the Mission Council, headed by the late Ambassador Ellsworth Bunker in Saigon. Bunker, Westmoreland told the court Thursday, was his civilian boss and President Johnson's representative.

The chief witness on this issue for CBS, retired major general Joseph A. McChristian, who was Westmoreland's intelligence chief in the first half of 1967, has said that when he told Westmoreland about the new, higher enemy estimates, the MACV chief was "quite disturbed."

"By the time I left his office, I had the definite impression that he felt that if he sent these figures back to Washington at that time, it would create a political bombshell," McChristian told CBS in an interview before the broadcast.

Westmoreland, on the stand Friday, was asked by his lawyer whether he remembers saying, "in words or substance," that a cable McChristian wanted to forward to Washington would cause a political bombshell.

"I am confident I did not use those words," the general testified, smiling to the jury. "Bombshell is not a part of my lexicon."

Westmoreland's strong testimony, coming after several witnesses whose appearances were confusing, at best, for the general's case, may mark the start of a long month for CBS officials.

Burt told reporters last week that within the next few weeks he will call a series of CBS employees who worked on the broadcast, including producer George Crile, and his boss, Howard Stringer, the executive producer of the show.

"The worst is yet to come for CBS," one network official said last week.